IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No.2312 of 2007
To
FIRST APPEAL No.2328 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE J.M.PANCHAL
AND
HON'BLE SMT. JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment?

2 To be referred to the Reporter or not?

3 Whether Their Lordships wish to see the fair copy of the judgment?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?

5 Whether it is to be circulated to the Civil Judge?

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SPL. LAND ACQ. OFFICER & ANR. - Appellants
Versus
BHIKABHAI SHANKARBHAI & ORS. - Respondents

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Appearance :
MR Jashwant K. Shah, AGP for Appellants.
MR GM AMIN for Respondents.

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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL
and
HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 22/06/2007

COMMON ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE J.M.PANCHAL)

These appeals filed under Section 54 of the Land Acquisition

Act, 1894 ("the Act" for short) read with Section 96 of the Code of Civil Procedure, 1908, are directed against common judgment and award dated March 31, 2006 rendered by the learned 4th Additional Senior Civil Judge, Ahmedabad (Rural) at Navrangpura in Land Acquisition Case Nos.562 of 1998 to 578 of 1998 by which the claimants have been awarded additional amount of compensation at the rate of Rs.17.90 Paise for their acquired lands over and above the compensation offered to them by the Special Land Acquisition Officer at the rate of Rs.1.07 Paise per square metre by his award dated January 17, 1997.

2. A proposal was made by the Executive Engineer, Narmada Yojana, Division No.8, Dholka, to the State Government to acquire agricultural lands of Village: Sakodara, Taluka: Dholka, District: Ahmedabad for the public purpose of construction of a canal under Narmada Project. On perusal of the same, the State Government was satisfied that the lands of Village: Sakodara mentioned therein were likely to be needed for the said public purpose. Therefore, a notification under Section 4 of the Act was issued which was published in the official gazette on April 28, 1994. The landowners were thereafter served with notices as required by Section 4 of the Act. After considering their objections, a report was forwarded by the Special Land Acquisition Officer to the State Government as contemplated by

Section 5-A(2) of the Act. On consideration of the said report, the State Government was satisfied that the lands of Village: Sakodara, which were specified in the notification published under Section 4(1) of the Act, were needed for the public purpose of construction of canal under Narmada Project. Therefore, a declaration under Section 6 of the Act was made which was published in the official gazette on April 20, 1995. The interested persons were thereafter served with notices for determination of compensation payable to them. Accordingly, the claimants appeared before the Special Land Acquisition Officer and claimed compensation at the rate of Rs.200=00 per square metre. Having regard to the materials placed before him, the Special Land Acquisition Officer by his award dated January 17, 1997 offered compensation to the claimants at the rate of Rs.1.07 paise per square metre. The claimants were of the opinion that the offer of compensation made to them was totally inadequate. Therefore, they submitted applications under Section 18 of the Act requiring the Special Land Acquisition Officer to refer their cases to the Court for the purpose of determination of just amount of compensation payable to them. Accordingly, references were made to the District Court, Ahmedabad (Rural) where they were registered as Land Acquisition Case Nos.562 of 1998 to 578 of 1998.

3. On behalf of the claimants, witness Bhikhabhai Shankerbhai Patel was examined at Exhibit 28. After giving particulars of the lands acquired, the witness mentioned that the lands acquired were even and highly fertile. According to this witness, each claimant was able to raise crops of cotton, cumin-seeds, paddy, wheat, etc. and that after deducting the cost of cultivation, each claimant was able to earn net profit of Rs.40,000=00 per *vigha* per year from the sale of agricultural produces. In support of his case that the lands acquired were highly fertile, the witness produced 7/12 extracts relating to the lands acquired at Exhibits 15 to 25. The witness further mentioned before the Court that the boundaries of Village: Sindhrej were touching boundaries of his village and that the lands from village: Sindhrej were also acquired for the public purpose of canal under Narmada Project. According to this witness, last survey number of Village: Sindhrej which was acquired and the lands acquired in the instant case were adjoining each other. The witness informed the Court that the claimants whose lands were acquired from Village: Sindhrej were awarded compensation at the rate of Rs.16.50 Paise per square metre by the Reference Court and, therefore, on the basis of the said award, the claimants were entitled to enhanced compensation. The witness produced a copy of the judgment of the Reference Court relating to the lands of Village: Sindhrej, at Exhibit 26. The witness also

informed the Court that the judgment delivered by the Reference Court relating to the lands of Village: Sindhrej was accepted by the State Government as well as by the Acquiring Body and that no appeal was preferred against the same. In order to indicate the boundaries of Village: Sindhrej and Village: Sakodara, the witness produced DLR map at Exhibit 23. The witness further asserted before the Court that the lands, which were acquired in the instant case, were similar in all respects to the lands which were acquired from Village: Sindhrej including fertility and that same pattern of crop was prevalent in both the villages.

This witness was cross-examined by the learned counsel for the Acquiring Authorities in detail. In cross-examination by the learned District Government Pleader, the witness mentioned that Village: Sindhrej was at a distance of 10 Kilometres from his village. The witness also stated that the quality of the lands of Village: Sindhrej was better than that of lands of his village. The witness further stated in his cross-examination that value of the lands of Village: Sindhrej was more than that of lands of his village.

4. On behalf of the Acquiring Authorities, witness Shashikant Chhaganbhai Prajapati was examined at Exhibit 57. In his examination-in-chief, the witness mentioned that the crops of

paddy, wheat, *juvar*, cereals, etc. were being grown on the acquired lands. In cross-examination by the learned counsel for the claimants, the witness admitted that unless and until irrigation facilities are available, crop of paddy cannot be raised. It was further admitted by this witness that Narmada Canal was coming from Village: Sindhrej and entering *sim* of Village: Sakodara. The witness in no uncertain terms admitted that last survey number of Village: Sindhrej which was acquired for the public purpose of construction of canal under Narmada Project was touching the first survey number of Village: Sakodara. The witness further admitted in his cross-examination that the lands of Village: Sindhrej with reference to which the award was rendered by the Reference Court were touching the lands acquired in the instant case and, therefore, the value of the lands of both the villages should be considered to be the same.

It may be mentioned that certain sale deeds were sought to be produced by the acquiring body *vide* list Exhibit 30.

5. On appreciation of the evidence adduced by the parties, the Reference Court was of the opinion that the previous award of the Reference Court relating to the lands of Village: Sindhrej was a relevant piece of evidence and furnished good guidance for the purpose of determining the market value of the lands acquired

in the instant case. The Reference Court noticed that the notification under Section 4(1) of the Act was published in the official gazette on November 27, 1992 for acquiring the lands from Village: Sindhrej whereas in the instant case, notification was published in the official gazette on April 28, 1994 and, therefore, in view of the gap of time of about one year and five months in publications of two notifications, the claimants were entitled to benefit of rise in price of the lands at the rate of 10% per annum in view of the judgment in *Special Land Acquisition Officer, Bharuch vs. Motibhai Mohanbhai, 1997 (2) G.L.H. 773.* In the ultimate analysis, the Reference Court has awarded additional amount of the compensation at the rate of Rs.17.90/- to the claimants by the impugned judgment and award, giving rise to the above numbered appeals.

6. This Court has heard Mr.Jashwant K. Shah, learned Assistant Government Pleader for the appellants, and Mr.G.M.Amin, learned counsel for the claimants in each appeal. This Court has also considered the paper-book supplied by the learned counsel for the claimants, which includes oral as well as documentary evidence adduced by the parties before the Reference Court.

7. It is true that the claimants could not make their assertion good that the lands acquired were so fertile that each of the claimants

was able to earn net income of Rs.40,000=00 per *vigha* per year. However, the said fact pales into insignificance inasmuch as the enhanced compensation was never claimed by the claimants on yield basis. The record does not indicate that the enhanced compensation was claimed by the claimants even on the basis of comparable sale instances. What was relied upon by the claimants in support of their claim for enhanced compensation was previous award of the Reference Court relating to the lands of Village: Sindhrej, which was produced at Exhibit 26. A perusal of Exhibit 26 makes it more than clear that pursuant to the proposal made by the Executive Engineer, Narmada Project (Main Canal) Construction Division No.13, Gandhinagar, the lands of Village: Sindhrej, Taluka: Dehgam, District: Gandhinagar were acquired for the public purpose of construction of Narmada Main Canal under Sardar Sarovar Project pursuant to publication of notification under Section 4 of the Act in the official gazette on November 27, 1992. Therein, the Land Acquisition Officer had offered compensation to the claimants at the rate of Rs.1.50 Paise per square metre for irrigated lands and Re.1/- per square metre for non-irrigated lands by his award dated November 27, 1995. Feeling aggrieved, the claimants had sought references. Accordingly, the references were made to the District Court, Ahmedabad (Rural) at Navrangpura, where they were registered as L.A.Q. Nos.1794

of 1996 to 1812 of 1996. In those cases, on behalf of the claimants witness Mohanbhai Kalabhai Vaghela was examined at Exhibit 29 whereas on behalf of the Acquiring Authorities Ms.Pallaviben Ghanshyambhai was examined at Exhibit 27. After appreciation of the evidence adduced by the parties, the Reference Court by a common judgment and award dated August 17, 2001 awarded additional amount of compensation to the claimants at the rate of Rs.15/- per square metre.

8. The contention that the previous award of the Reference Court relating to the lands of Village: Sindhrej should not have been relied upon for the purpose of determining the market value of the lands acquired in the instant cases because Village: Sindhrej was situated at a distance of 10 Kilometres from Village: Sakodara and value of the lands of Village: Sindhrej was more than that of the lands of Village: Sakodara, cannot be accepted inasmuch as it is in terms admitted by the witness for the Acquiring Authorities that the boundaries of both the villages touch each other and value of the lands of both the villages is same. Relevance of the previous award of the Reference Court relating to the lands of Village: Sakodara stands satisfactorily established by the reliable testimony of the witness examined by the claimants. Relevant part of the cross-examination of the witness for the acquiring authorities, which is reproduced

earlier, also establishes the relevancy of the previous award of the Reference Court relating to the lands of Village: Sindhrej. On the facts and in the circumstances of the case, this Court is of the opinion that the previous award of the Reference Court relating to the lands of Village: Sindhrej was rightly relied upon by the Reference Court for the purpose of determining the market value of the lands, which were acquired from Village: Sakodara. The exercise undertaken by the Reference Court for the purpose of determining market value of the lands acquired in the instant case is inconsonance with the principle that the previous award of the Reference Court relating to the lands of a village, which has attained finality can be relied upon as a good piece of evidence for the purpose of determining the market value of similar lands acquired subsequently from the adjoining village.

9. The plea that the sale deeds produced by the Acquiring Authorities are neither considered nor discussed in the impugned award and, therefore, the appeals should be accepted, is devoid of merits. Normally, sale instances relating to the lands of a village from which lands are acquired would furnish good guidance for the purpose of determining the market value of the lands acquired. However, applicability of this principle is subject to fulfillment of certain requirements. First of all, it must

be established that the sale transactions relied upon are proximate in point of time to the publication of notification issued under Section 4(1) of the Act in the official gazette and secondly, it must be established that the lands covered by the sale deeds are similar in all respects to the lands acquired. In the instant case, this Court finds that certain sale deeds were produced by the Acquiring Authorities along with list Exhibit 30, which was submitted before the Court on December 19, 2005. The testimony of witness Shashikant Chhaganbhai Prajapati, who was examined on behalf of the acquiring authorities, was recorded on March 22, 2006, i.e. subsequent to production of sale deeds. However, witness Shashikant Prajapati did not refer to any of the sale deeds, which were sought to be relied upon by the acquiring body for the purpose of establishing that the claimants were not entitled to enhanced compensation nor even faint attempt was made to establish the relevancy of these documents to the lands acquired in the instant cases. A bare perusal of these documents makes it evident that Exhibit 33 was executed on April 29, 1987 whereas rest of the documents were executed between 1995 to 2002. Thus, none of the sale deeds was proximate in point of time to the notification issued under Section 4(1) of the Act in the official gazette on April 28, 1994. In view of these glaring lapses in the case of the Acquiring Authorities, this Court is of the opinion that the Reference Court

was justified in not taking into consideration the sale deeds produced by the Acquiring Body while determining the market value of the lands acquired in the instant cases.

10. On reappreciation of the evidence adduced by the parties before the Reference Court, this Court finds that correct findings of facts have been arrived at by the Reference Court to which well-settled principles of law have been applied.

11. As far as the amount of compensation payable to the claimants is concerned, this Court finds that notification under Section 4(1) of the Act was published in the official gazette for the purpose of acquiring lands from Village: Sindhrej on November 27, 1992 whereas in the instant case notification under Section 4(1) of the Act was published in the official gazette on April 28, 1994. It is well to remember that the price of the lands never remain static and would go on increasing day-by-day. Under the circumstances, the Reference Court was justified in granting benefit of rise in price of the lands to the claimants on the basis of previous award of the Reference Court to the claimants at the rate of 10% per annum. The calculation of the amount of compensation payable to the claimants on the basis of previous award of the Reference Court relating to the lands of Village: Sindhrej is not in dispute before this Court. The learned

Assistant Government Pleader could not persuade this Court to take a different view than the one taken by the Reference Court on appreciation of the evidence. Thus, the appeals, which lack merits, deserve to be dismissed.

For the foregoing reasons, all the appeals fail and are dismissed. There shall be no orders as to costs. The Registry is directed to draw decree in terms of this judgment immediately.

(J. M. Panchal, J.)

(Smt. Abhilasha Kumari, J.)

Rajendra